

Marc J. Randazza, NV Bar # 12265
LaTeigra C. Cahill, NV Bar # 14352
RANDAZZA LEGAL GROUP, PLLC
4035 S. El Capitan Way
Las Vegas, NV 89147
Telephone: 702-420-2001
Facsimile: 305-437-7662
ecf@randazza.com

Attorneys for Plaintiffs
Dennis Hof and Cherry Patch LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DENNIS HOF, an individual;
CHERRY PATCH LLC, a Nevada limited
liability company.

Plaintiffs,

vs.

NYE COUNTY; NYE COUNTY BOARD OF
COUNTY COMMISSIONERS; DAN
SCHINHOFEN (in his personal and official
capacity as an employee of Nye
County); NYE COUNTY SHERIFF's OFFICE;
SHARON WEHRLY (in her official
capacity as an employee of Nye
County); JANE DOE; and JOHN ROE.

Defendants.

Case No. _____

**VERIFIED 42 U.S.C. § 1983
COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
DAMAGES**

INJUNCTIVE RELIEF REQUESTED

JURY TRIAL DEMANDED

Plaintiffs Dennis Hof and Cherry Patch LLC (known collectively as
"Plaintiffs") brings this civil rights action for injunctive relief, declaratory relief, and
damages. This is an action under 42 U.S.C. § 1983 to address violations of his rights
protected by the First Amendment of the United States Constitution and the rights

protected by the Nevada Constitution. Plaintiffs seek a permanent injunction, declaratory relief, and should be awarded damages, costs, attorneys' fees, and any other relief to which he is entitled as a victim of civil rights violations under the Constitution of the State of Nevada, Article 1, § 9. Plaintiffs seek a permanent injunction, declaratory relief, and should be awarded damages, costs, attorneys' fees, and any other relief to which he is entitled as a victim of civil rights violations.

INTRODUCTION

1. Plaintiff Dennis Hof ("Mr. Hof") is the owner of several brothels in Nevada, including (relevantly) The Love Ranch South, a brothel licensed by the Nye County Board of County Commissioners.

2. Plaintiff Dennis Hof is a Manager of Cherry Patch LLC, a limited liability company that does business as The Love Ranch South, located at 300 Appoloosa Lane in Crystal, Nevada.

3. Mr. Hof is a civically concerned individual, who over the years, has not shied away from expressing his political opinions and presenting himself as a candidate for public office.

4. Mr. Hof has actively lobbied for legislation over the years as a member of the Nevada Brothel Owners' Association, and is currently running for political office for the rural District 36 seat in the Nevada State Assembly covering Nye County, Lincoln County, and part of Clark County.

5. Mr. Hof has owned and operated Cherry Patch LLC since 2010.

6. Cherry Patch LLC has operated the Love Ranch South since 2010.

7. Mr. Hof prides himself in being a law-abiding citizen, and has always actively worked with law enforcement and government officials to ensure that his brothels are operated in accordance with the law.

8. There is an ancient tradition of providing unofficial and official signs and signals that a potential customer is traveling in the correct direction when

1 seeking out a brothel. For example, while most commercial speech from Ancient
2 Pompeii is lost to the ages, the excavated streets and walls still show graffiti, in
3 the form of penis carvings, with the bell end pointing in the direction of the
4 brothel. Plaintiffs, as heirs to this time-honored tradition have sought to continue
5 it, in a more creative and humorous manner.

6 9. Instead of hacking penises into the rocks and public roads, Plaintiffs
7 have taken the more modern approach of installing several signs along a path
8 leading to the Love Ranch South so that potential visitors know they are heading
9 in the right direction and to ensure that potential visitors do not get lost in
10 residential neighborhoods looking for the Love Ranch South.

11 10. One such sign had the words "Lovers at Play" (referenced as the
12 "Sign" or the "Lovers at Play Sign" throughout) and depicted a non-obscene stick
13 figure couple wrapped around each other, as shown below as Figure 1.

14 **Figure 1**



23 11. Based on information and belief, Dan Schinhofen of the Nye County
24 Board of Commissioners directed Sheriff Wehrly to instruct Plaintiffs to censor the
25 non-obscene Sign under threat of instituting a show-cause hearing against
26 Plaintiffs, in violation of Plaintiffs' Constitutional rights, including Plaintiffs' First
27 Amendment rights to freedom of speech and expression.

1 12. Plaintiffs, fearful that Mr. Schinhofen would retaliate against them,
2 censored the Sign at the Nye County Official's direction, as shown below as
3 Figure 2.

4 **Figure 2**



15 13. However, this censorship is not voluntary – it is done out of fear of
16 prosecution or other governmental retaliation for the speech. This fear is not
17 merely theoretical, but is the natural result of law enforcement threats, delivered
18 to plaintiffs at the behest of the Nye County Official.

19 **JURISDICTION AND VENUE**

20 14. This Court has original subject matter jurisdiction over the federal
21 Constitutional violations alleged in this First Amended Complaint pursuant to the
22 provisions of 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 & 1343. This Court has
23 jurisdiction to issue injunctive and declaratory relief pursuant to 28 U.S.C. § 2201
24 and 42 U.S.C. § 1983.
25
26
27

1 15. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391.
2 Defendant resides in Nevada, and all actions pertinent to this Complaint
3 occurred in Nye County, Nevada.

4 **INTRA-DISTRICT ASSIGNMENT**

5 16. Intra-district assignment to the Southern Division is appropriate
6 because a substantial part of the events or omissions which give rise to the claims
7 herein occurred in Pahrump, Nevada.

8 **THE PARTIES**

9 17. Plaintiff Dennis Hof is a resident of the State of Nevada.

10 18. Plaintiff Cherry Patch LLC is a limited liability company doing business
11 in the State of Nevada.

12 19. Defendant, Nye County, is a county located in the State of Nevada.

13 20. Defendant, the Nye County Board of County Commissioners, is a
14 public entity that oversees licensing of businesses in Nye County, which is located
15 in the State of Nevada.

16 21. Defendant, the Nye County Sheriff's Office, is a public entity that
17 oversees law enforcement in Nye County, which is located in the State of
18 Nevada.

19 22. Defendant, Sharon Wehrly, is an employee of Nye County in the
20 State of Nevada.

21 23. Defendant, Dan Schinhofen, is an employee of the District 5
22 Standing Commissioner and Vice-Chairman of the Nye County Board of County
23 Commissioners in the State of Nevada.

24 24. Defendant, Dan Schinhofen, upon information and belief, is a
25 resident of the State of Nevada.

26 25. John Doe and Jane Doe may or may not be agents of
27 Mr. Schinhofen, and may be added as Defendants to this lawsuit at a later date.

STANDING

26. Mr. Hof was directly affected by Defendants' unlawful activities because he is the direct target of Defendants' unlawful efforts to censor his right to free expression.

27. Defendants' activities have caused a violation of Plaintiffs' rights under the U.S. and Nevada Constitutions. Thus, the requirements for Article III standing have been met.

FACTS COMMON TO ALL CLAIMS

28. Mr. Hof purchased two brothels in Nye County in 2010, which included a brothel formerly known as the Cherry Patch.

29. Mr. Hof transformed the brothel into the Love Ranch South, which is the second location of his Love Ranch brand brothels, as the original Love Ranch is located near Carson City, Nevada.

30. Mr. Hof is also a Managing Officer of Cherry Patch LLC, the entity that operates the Love Ranch South.

31. The Love Ranch South¹ is known for having many humorous signs, located near the brothel, such as a yellow sign that says "Booze and Booty" with an arrow pointing ahead² (see Exhibit 1) and the "Lovers at Play" Sign, that is the subject of this Complaint and shown above as Figure 1.

32. The signs have been located near the brothel for over five years.

33. No residents have complained about the signs to Mr. Hof.

¹ Mr. Hof is known for having humorous yellow signs outside of his brothels, such as the yellow sign outside of his Northern Nevada Brothel (not in Nye County), the Moonlite Bunny Ranch, which depicts two coital bunnies, as seen in Exhibit 2.

² While beyond the scope of this Complaint, Plaintiffs recently removed the Booze and Booty Sign, not voluntarily, but out of fear of retaliation based on Defendants threats about the Lovers at Play Sign, which shows that Defendants have effectively chilled Plaintiffs' speech.

1 34. On information and belief, no citizen has ever complained about
2 the signs.

3 35. Part of Plaintiffs' motivation for having the signs near the Love Ranch
4 South is to alert potential customers that they are near the brothel, and to ensure
5 that potential customers do not get lost in local residential neighborhoods.

6 36. Nye County Officials have inspected Love Ranch South quarterly for
7 many years, and no Official has ever mentioned that the signs violate local or
8 state laws in any way. This demonstrates that the signs violate no law, and even
9 if they do, the government should be estopped from claiming that they do
10 today.

11 37. After a recent quarterly inspection by Nye County Officials between
12 December 2017 and January 2018, Mr. Hoff received a phone call from Nye
13 County Sheriff Sharon Wehrly ("Sheriff Wehrly"), a County official.

14 38. Sheriff Wehrly told Mr. Hoff that she had been directed by Defendant
15 Dan Schinhofen to call about a complaint that Defendant Schinhofen had
16 about a Sign near the Love Ranch South.

17 39. Sheriff Wehrly warned Mr. Hoff that Defendant Schinhofen planned
18 to schedule a show-cause hearing against Mr. Hoff and Cherry Patch LLC
19 specifically because of the Lovers at Play Sign.

20 40. Sheriff Wehrly told Mr. Hof that the issue Mr. Schinhofen has with the
21 Sign was the picture of the stick figures.

22 41. Sheriff Wehrly told Mr. Hof that the stick figures had to be censored
23 immediately, or else Defendant Schinhofen would schedule a show-cause
24 hearing against Mr. Hof.

25 42. At a show-cause hearing, the government requires a licensed
26 brothel owner to explain why he should be allowed to maintain his license.
27

43. Implicit in a threat to schedule a show-cause hearing is the possibility of losing one's license.

44. Upon information and belief, Defendant Schinhofen engaged in a routine pattern of threatening to schedule show-cause hearings based on brothel owners engaging in First Amendment protected free speech and expression.

45. Afraid of retaliation, Plaintiffs' immediately censored the Sign and blocked the stick-figures from view, as shown in Figure 2 above. However, they have no desire to have their First Amendment rights trampled upon, and engaged in this self-censorship involuntarily after being threatened by the government.

46. Upon information and belief, the Lovers at Play Sign, uncensored, did not violate any local or state laws.

47. Upon information and belief, Mr. Schinhofen directed that the Sign be censored because he did not like the content of the Sign and exercised unfettered discretion in seeking to censor the Sign's content.

48. Upon information and belief, the display of the non-obscene Sign did not violate any ordinance.

49. Upon information and belief, the signs are not advertisements, as defined by NV Rev Stat § 201.430 (2013), because they do not identify the brothel or advertise prostitution in any way.

50. The motivation behind the signs is to guide people, and the signs do not identify the brothel nor advertise the brothel.

51. The Sign at issue is located near the Love Ranch South.

52. Mr. Schinhofen is a County Official who has authority over whether Mr. Hof may keep his brothel license on a quarterly basis, and Mr. Hof's fear of retaliation is legitimate.

53. Plaintiffs' Lovers at Play Sign is not obscene.

54. Plaintiffs' Lovers at Play Sign is not an advertisement for a brothel, as defined by NV Rev Stat § 201.430 (2013).

55. Plaintiffs' Lovers at Play Sign is speech protected by the First Amendment.

56. At no time did Mr. Schinhofen provide Mr. Hof a procedure to appeal his sudden and arbitrary decision that the Sign must be censored.

57. Mr. Hof suffered injury by these constitutional violations and is entitled to relief.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the First Amendment to the United States Constitution under 42 U.S.C. § 1983 (Free Speech)

58. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

59. Mr. Hof allege that Defendants' conduct of censoring his right to engage in free speech and expression is unconstitutional and violates his First Amendment rights to freedom of speech and expression.

60. Plaintiffs allege that Defendants' conduct, wherein Defendants directed Plaintiffs not to engage in specific speech based on its content, is unconstitutional and violates his First Amendment rights to freedom of speech and expression.

61. Plaintiffs allege that Defendants have not provided an administrative appeal process.

62. Plaintiffs allege that Defendant Schinhofen is an employee of Nye County and acted under color of law in depriving Plaintiffs of their First Amendment rights.

63. Plaintiffs allege that Defendant Schinhofen engaged in a routine pattern of threatening to schedule show-cause hearings based on brothel owners engaging in First Amendment protected free speech and expression.

64. Plaintiffs suffered injury, or reasonably fears imminent injury, by these constitutional violations and is entitled to relief.

SECOND CLAIM FOR RELIEF
Violation of Nevada Const., Art. 1, § 9.
(Free Speech)

65. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

66. Plaintiffs allege that Defendants' conduct of censoring his right to engage in free speech and expression is unconstitutional and violates his rights to freedom of speech and expression under Art. 1, § 9 of the Nevada Constitution.

67. Plaintiffs allege that Defendants' conduct, wherein Defendants directed Plaintiffs not to engage in specific speech based on its content, is unconstitutional and violates his rights to freedom of speech and expression protected by Art. 1, § 9 of the Nevada Constitution.

68. Plaintiffs allege that Defendants have not provided an administrative appeal process.

69. Plaintiffs allege that Defendant Schinhofen is an employee of Nye County and acted under color of law in depriving Plaintiffs of their free speech rights.

70. Plaintiffs allege that Defendant Schinhofen engaged in a routine pattern of threatening to schedule show-cause hearings based on brothel owners engaging in free speech and expression protected by Art. 1, § 9 of the Nevada Constitution.

71. Plaintiffs suffered injury, or reasonably fears imminent injury, by these constitutional violations and is entitled to relief.

THIRD CLAIM FOR RELIEF

Violation of the Fourteenth Amendment to the United States Constitution Under 42 U.S.C. § 1983 (Due Process)

72. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

73. Plaintiffs allege that Defendants' conduct, wherein Defendants directed Plaintiffs not to engage in specific speech based on its content is unconstitutional and violates his due process rights under the Fourteenth Amendment.

74. Plaintiffs allege that Defendant Schinhofen is an employee of Nye County and acted under color of law in depriving Plaintiffs of their due process rights under the Fourteenth Amendment.

75. Plaintiffs allege that Defendants' instructions to censor the Sign without providing a procedure to challenge the instruction violates his due process rights under the Fourteenth Amendment.

76. Plaintiffs suffered injury, or reasonably fears imminent injury, by these constitutional violations and is entitled to relief.

FOURTH CLAIM FOR RELIEF
Violation of Nevada Const., Art. 1, § 8
(Due Process)

77. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

78. Plaintiffs allege that Defendants' conduct, wherein Defendants directed Plaintiffs not to engage in specific speech based on its content is unconstitutional and violates his due process rights protected by Nevada Const., Art. 1, § 8.

79. Plaintiffs allege that Defendants' instructions to censor the Sign without providing a procedure to challenge the instruction violates thier due process rights protected by Nevada Const., Art. 1, § 8.

80. Plaintiffs allege that Defendant Schinhofen is an employee of Nye County and acted under color of law in depriving Plaintiffs of their due process rights protected by Nevada Const., Art. 1, § 8.

81. Plaintiffs suffered injury, or reasonably fears imminent injury, by these constitutional violations and is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully seek judgment as follows:

- a. A declaration that Defendants' actions in directing Plaintiffs to censor the Sign is unconstitutional under the First Amendment of the United States Constitution, and article 1, § 9 of the Nevada Constitution;
- b. A declaration that Defendants' actions in threatening to enforce its direction is unconstitutional under the First Amendment of the United States Constitution, and article 1, § 9 of the Nevada Constitution;

- c. A preliminary and permanent injunction enjoining Defendants from enforcing its directive to censor the Sign against Plaintiffs;
- d. A preliminary and permanent injunction enjoining Defendants from interfering with Plaintiffs' right to lawfully engage in constitutionally protected expression and activity within Nye County, Nevada;
- e. Damages in an amount to be determined at trial;
- f. An award of attorneys' fees and expenses under 42 U.S.C. § 1988; and,
- g. Any further relief the Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demands a trial by jury on all causes of action.

Dated: February 5, 2018.

Respectfully Submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar # 12265
LaTeigra C. Cahill, NV Bar # 14352
Randazza Legal Group, PLLC
4035 S. El Capitan Way
Las Vegas, NV 89147

Attorneys for Plaintiffs
Dennis Hof and Cherry Patch LLC

VERIFICATION

I, DENNIS HOF, declare:

1. I am over the age of 18 years;
2. I am the Plaintiff in this action;
3. Additionally, I am the Manager of Cherry Patch LLC;
4. Cherry Patch LLC is also a Plaintiff in this action, and I am authorized to act on behalf of Cherry Patch LLC;
5. I have read the foregoing Verified Complaint and know the contents thereof; and
6. The foregoing Complaint is true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of February 2018 at Mound House, Nevada.

DocuSigned by:

Dennis Hof

26D240F62C2F438...

Dennis Hof, Individually

DocuSigned by:

Dennis Hof

26D240F62C2F438...

Dennis Hof, on behalf of
Cherry Patch LLC